S.B. Civil First Appeal No. 846/2004
Hoshiyar Singh Vs. Jagdish

Date of Order: *04.09.2006*

HON'BLE MR. K.C.SHARMA, J.

Mr. Manish Bhandari for the appellant
Mr. Manoj Pareek for the respondent

With the consent of the parties, the appeal is heard and disposed of at the admission stage.

Plaintiff Jagdish instituted a suit for declaration to the effect that the adoption deed so executed by his father Ramjilal be declared illegal and ineffective and the plaintiff be declared to be the natural born son of Ramjilal. According to the plaintiff, defendant No.2 Hoshiyar Singh by deceitful means took his father Ramjilal into his grip, enticed him and succeeded in getting registered an adoption deed dated 17.6.1998 in his favour. The trial court, on consideration of evidence, decreed the suit in favour of the plaintiff, thereby declaring that the plaintiff respondent is the natural born son of Ramjilal.

It is given out that during pendency of suit,

comprimise came to be arrived at on 20.5.2000 between Ramjilal and the plaintiff, according to which Ramjilal admitted that plaintiff is his nautral born son. The witnesses examined by the plaintiff have also supported the statement of the plaintiff that plaintiff Jagdish is natural born son of Ramjilal. PW2 Om Prakash, PW3 Mohar Singh and PW4 Roshani Devi have stated that neither any proceedings as regards adoption of Hoshiyar Singh ever started nor Hoshiyar Singh was taken in adoption. Since plaintiff is the natural born son of Ramjilal, therefore Ramjilal could not have taken any person in adoption during life time of his son. If for any reason, Ramjailal has taken the appellant in adoption, such adoption would be void ab initio. Section 11 (i) of the Hindu Adoption and Maintenance Act 1956 provides that if the adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu son, son's son or son's son's (whether by legitimate blood relationship or by adoption) liviting at the

time of adoption.

In the present case, since plaintiff was alive, his father Ramjilal was not entitled to adopt defendant Hoshiyar Singh.

For the reasons aforesaid , this appeal fails and is hereby dismissed.

(Khem Chand Sharma),

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